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**Oliva Supermarkets LLC and RL Markets I LLC,
alter egos and United Food and Commercial
Workers, Local 464A. Case 22–CA–130315**

April 28, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND MCFERRAN

On December 18, 2015, Administrative Law Judge Steven Fish issued the attached decision. The General Counsel filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief¹ and has decided to affirm the judge's rulings, findings, and conclusions as modified below² and to adopt the recommended Order as modified and set forth in full below.³

¹ The judge's decision, including his Conclusion of Law 4, contained certain typographical errors, which have been corrected in the attached Decision.

² There are no exceptions to the judge's conclusions that Respondent RL Markets is the alter ego of Respondent Oliva, and that RL Markets and Oliva are single employers within the meaning of the Act. There are also no exceptions to the judge's conclusion that the Respondents violated Sec. 8(a)(5) and (1) of the Act by failing and refusing to recognize the Union as the collective-bargaining representative of unit employees at its Whippany, New Jersey location, and by failing to apply to unit employees the collective-bargaining agreement between Respondent Oliva and the Union.

The Respondents have not excepted to the judge's finding that Respondents have not applied the terms of the collective-bargaining agreement, including wage rates and benefit contributions, to the unit employees. We agree with the General Counsel that, on the facts of this case, the judge should have concluded that the Respondents violated Sec. 8(a)(5) and (1) by repudiating the collective-bargaining agreement, as alleged in the unfair labor practice complaint. See, for example, *Newark Electric Corp.*, 362 NLRB No. 44, slip op. 1, 15 (2015) (affirming judge's conclusion that respondents violated Sec. 8(a)(5) and (1) by, among other things, "repudiating the collective-bargaining agreement . . . and by failing to continue in effect all the terms and conditions of employment of its collective-bargaining agreement, including by ceasing to make contributions to the benefit funds"); *Kodiak Electric Co., Inc.*, 336 NLRB 1038, 1038, 1043 (2001) (affirming judge's conclusion of law that respondents violated Sec. 8(a)(5) "[b]y refusing to apply the terms of its collective-bargaining agreements with the Union to the unit employees . . .; repudiating its recognition of, and contract with, the Union. . . ."), enf'd. 70 Fed.Appx. 664 (4th Cir. 2003) (unpublished). We have amended the judge's Conclusions of Law consistent with our findings here.

³ We shall modify the judge's recommended Order in accordance with our decisions in *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016), and *J. Picini Flooring*, 356 NLRB 11 (2010), and to conform to the amended conclusions of law, remedy, and the Board's standard

AMENDED CONCLUSION OF LAW

Substitute the following for Conclusion of Law 4.

By failing and refusing to recognize the Union as the collective-bargaining representative of its employees at its Whippany, New Jersey location, employed in the bargaining unit represented by the Union, and by repudiating, and failing to apply to the unit employees, the collective-bargaining agreement between Respondent Oliva and the Union, the Respondents have violated Section 8(a)(5) and (1) of the Act.

AMENDED REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

In addition to the remedies recommended by the judge, we shall require the Respondents to give full force and effect to the terms and conditions of employment provided in the collective-bargaining agreement effective from March 18, 2012, through June 18, 2016, between the Union and Oliva, and apply them to the unit employees at the Whippany, New Jersey location. We shall require Respondents to make whole unit employees by, inter alia, making all delinquent contributions to the fringe benefit funds set forth in the collective-bargaining agreement that have not been made since May 7, 2014, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).⁴ The Respondents also shall be required to reimburse the unit employees for any expenses ensuing from the failure to make the required benefit fund contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf'd. mem. 661 F.2d 940 (9th Cir. 1981). Such amounts shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf'd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).⁵ We shall also order the Respondents to compensate affected employees for the adverse tax conse-

remedial language. We shall substitute a new notice to conform to the Order as modified.

⁴ We leave to the compliance stage the question whether the Respondents must pay any additional amounts into the benefit funds in order to satisfy our make-whole remedy. *Merryweather Optical Co.*, supra.

⁵ To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the employer's delinquent contributions during the period of the delinquency, the Respondents will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondents otherwise owe the fund.

quences, if any, of receiving lump-sum backpay awards, and file with the Regional Director a report allocating the backpay awards to the appropriate calendar years for each employee. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

ORDER

The National Labor Relations Board orders that the Respondents, Oliva Supermarkets, LLC and RL Markets 1, LLC, Cedar Knolls and Whippany, New Jersey, their officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with United Food and Commercial Workers, Local 464A (the Union) as the exclusive collective-bargaining representative of employees in the following appropriate unit:

All employees employed at our Whippany, New Jersey location, in the meat, poultry, fish, appetizer and delicatessen departments, both full time and part-time.

(b) Repudiating and failing and refusing to apply to employees in the unit described above the collective-bargaining agreement in effect from March 18, 2012, through June 18, 2016, between the Union and Oliva Supermarkets.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit described above.

(b) Give full force and effect to the terms and conditions of employment provided in the collective-bargaining agreement effective from March 18, 2012, through June 18, 2016, between the Union and Oliva Supermarkets, and apply them to the employees in the unit described above.

(c) Make whole unit employees for any loss of earnings and other benefits resulting from the Respondents' repudiation of, and failure to apply, the collective-bargaining agreement and pay all contractually required fringe benefit fund contributions not previously paid, and make unit employees whole for any expenses resulting from the Respondents' failure to make such contributions in the manner set forth in the remedy section of the judge's decision as amended in this decision.

(d) Compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 22, within 21 days of the date the amount of backpay is

fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s) for each employee.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at their Whippany, New Jersey facility copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondents customarily communicate with their employees by such means. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 7, 2014.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 22 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

Dated, Washington, D.C. April 28, 2016

Mark Gaston Pearce,

Chairman

⁶ If this Order is enforced by a judgment of the United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Kent Y. Hirozawa, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with United Food and Commercial Workers, Local 464A (the Union) as the exclusive collective-bargaining representative of our employees in the following appropriate bargaining unit:

All employees employed at our Whippany, New Jersey location, in the meat, poultry, fish, appetizer and delicatessen departments, both full time and part-time.

WE WILL NOT repudiate and fail and refuse to apply to employees in the unit described above the collective-bargaining agreement in effect from March 18, 2012, through June 18, 2016, between the Union and Oliva Supermarkets.

WE WILL not in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the unit described above.

WE WILL give full force and effect to the terms and conditions of employment provided in the collective-bargaining agreement effective from March 18, 2012, through June 18, 2016, between the Union and Oliva

Supermarkets, and apply them to the employees in the unit described above.

WE WILL make you whole for any loss of earnings and other benefits suffered as a result of our repudiating, and refusing to apply, the collective-bargaining agreement, plus interest, and WE WILL pay all contractually required fringe benefit fund contributions not previously paid and reimburse you for any losses or expenses arising from our failure to make the required payments, plus interest.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar year(s) for each employee.

OLIVA SUPERMARKETS, LLC AND RL MARKETS I, LLC

The Board's decision can be found at www.nlrb.gov/case/22-CA-130315 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



OLIVA SUPERMARKETS, LLC AND RL MARKETS I, LLC

Nancy Slahetka, Esq. and *Robert Mulligan, Esq.*, for the General Counsel.

Victor Laracca, Pro Se for the Respondent Oliva Supermarkets.
Roberto Laracca, Pro Se for the Charging Party RL Markets.

DECISION

STATEMENT OF THE CASE

STEVEN FISH, Administrative Law Judge. Pursuant to charges filed on June 5, 2014, by United Food and Commercial Workers, Local 464A (Union or Local 464A), the Director for Region 22 of the National Labor Relations Board issued a complaint and notice of hearing on December 30, 2014, alleging that Respondent Oliva Supermarkets herein called (Oliva) and Respondent RL Market's, LLC herein called (RL) (Jointly

Respondents) were alter egos and had violated Sections 8(a)(5) and (1) of the Act by failing to recognize and bargain with the Union, and by repudiating the collective bargaining with the Union and refusing to apply the terms of the collective-bargaining agreement to employees at Respondents' Whippany, New Jersey location. A trial was heard before me in Newark, New Jersey, on March 17, 18, 19, and 20, 2015. Briefs have been filed by General Counsel and Respondents, and have been carefully considered. Based on the entire record, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION

Respondent Oliva is a limited liability company (LLC) with an office and place of business in Cedar Knolls, New Jersey, where it operated a retail grocery store, until February of 2014.

Since May 2014, Respondent RL Markets, an LLC with an office and place of business in Whippany, New Jersey, has been operating a retail grocery store.

Based on a projection of its operations since May 4, 2014, at which time Respondent RL Markets commenced its operations at its Whippany, New Jersey facility, Respondent RL Markets will derive gross revenues in excess of \$500,000 in conducting its operations.

During the same period of time, Respondent RL Markets has purchased and received at its Whippany, New Jersey facility, products, goods, and materials in excess of \$5000 from other enterprises located within the state of New Jersey, each of which other enterprises has received these goods from points outside the state of New Jersey.

It is admitted and I so find that Respondents have been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

It is also admitted and I so find that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. FACTS

A. Background

Oliva operated a downtown supermarket in Cedar Knolls, New Jersey, from 2004 until the store closed on February 22, 2014. On May 7, 2014, RL Markets opened a supermarket named Farmtastic in Whippany, New Jersey (Whippany Stores or Farmtastic), which is located three miles away from the Cedar Knolls store, both located in Hanover Township, New Jersey. V&V Supermarkets (V&V or Lake Hiawatha) operates another Foodtown supermarket in Lake Hiawatha (Lake Hiawatha store), which has been opened since 2001.

United Food and Commercial Workers Local 464A represents a unit of employees employed in the meat, poultry, fish, appetizers, and deli departments of Foodtown supermarkets within a certain jurisdictional area of New Jersey and New York. Other employees at the Cedar Knolls and Lake Hiawatha stores are represented for the purpose of collective bargaining by Local 1262, United Food and Commercial Workers (Local 1262). The most recent contract is effective from March 18, 2012, through June 18, 2016. Oliva and V&V are parties to this contract. RL Markets has not recognized the Union and

has not applied the contract to the bargaining unit members working at the Whippany store, even though the Whippany store is located within the Union's jurisdiction.

B. Corporate Structure and Management of Companies

Victor Laracca owns a 99 percent interest in Oliva and his wife Josephine owns a 1 percent interest. Victor Laracca is also the owner and president of V&V (V&V is a corporation).

See Rider page 14. Roberto Laracca, Victor Laracca's son, is listed on the Certificate of Formation of RL Markets as the sole owner. Roberto Laracca was the store manager at the V&V Lake Hiawatha store.

Victor Laracca has been the owner of a number of supermarkets since 1977. He purchased his first supermarket located in Orange, New Jersey, and it was a Foodtown store. At that time, Victor agreed to recognize the Union, which had represented the employees in the Local 464A bargaining unit, and to apply the collective-bargaining agreement in existence at the time. Victor sold that store and, in partnership with his brother, purchased another Foodtown supermarket located in Newark, New Jersey, in 1982. Once again Victor Laracca agreed to recognize the Union and apply the Union contract to the employees in the bargaining unit at that store.

In 2001, Victor Laracca purchased the Lake Hiawatha store, which was a Grand Union store that had gone bankrupt. Grand Union had the same contract with Local 464A as the Foodtown markets. Victor opened the store as a Foodtown and agreed to recognize the Union and apply the contract to the bargaining unit employees at that store, under V&V.

In 2004, Victor Laracca bought the Cedar Knolls store, which was also purchased through the bankruptcy court. At that time he also agreed to recognize the Union as the collective-bargaining representative for the employees in the bargaining unit, and to apply the contract to them.

Adam Shapiro was the store manager at the Cedar Knolls Foodtown. Shapiro had been employed at the store, which had been a Foodtown prior to the bankruptcy. Shapiro had been a member of Local 1262 when he was employed by the prior Foodtown market. After Shapiro's employment started at Oliva as manager, he was not a Local 1262 member for a number of years. However, Shapiro at some point went to Victor Laracca, and asked if he could go back into the union (Local 1262) so he could accrue pension credits. Laracca said okay and Shapiro rejoined Local 1262. Thus, from that time on Shapiro also received health benefits through Local 1262's plan, although he was the manager at the Cedar Knolls store. After the Cedar Knolls store closed in February of 2014, as will be described in more detail below, Shapiro eventually was hired as manager of the Whippany Farmtastic store, owned by RL Markets, which opened in May of 2014. At the Farmtastic store, Shapiro received health insurance under the Company plan, which covers management of V&V and the family members of the Laracca family. This includes Victor Laracca, Roberto Laracca, and Daniella Laracca, who is Victor's daughter and Roberto's sister. Daniella Laracca was employed by Oliva as a bookkeeper and worked under the supervision of Patty Hicks, who was the bookkeeper for both V&V and Oliva, as well as RL Markets. When RL Markets opened the Farmtastic store in Whippany on

May 7, 2014, Daniella Laracca was hired to run the Juice Bar at the Whippany store; she continued to assist Hicks as a bookkeeper as well at the Whippany store.

The store at Whippany had originally been a Pathmark supermarket, which had closed and was vacant for some time when Roberto Laracca had the idea to open a store at the location sometime in 2011. He discussed it with his father, Victor, who initially was skeptical, but eventually agreed that Roberto should pursue it and agreed to help Roberto with financial and operational matters concerning the store. On December 15, 2011, RL Markets I LLC was formed. The company's manager listed on the certificate of formation was Roberto Laracca. Roberto Laracca was the only member of the LLC listed, and he signed the operating agreement.

On December 15, 2011, RL Markets executed a 15-year lease with Pine Plaza Associates for the Whippany store. Victor participated in the negotiations with the landlord. The lease is guaranteed by the assets of V&V and Oliva, and personally guaranteed by Victor and Josephine Laracca. Under the terms of the lease, monthly payments were \$35,000, plus CAM charges and taxes. A CAM charge covers maintenance of the shopping mall, and is based on the size of the tenant. Since RL Markets was the biggest store in the shopping center, it paid the most CAM charges. According to Roberto Laracca, RL Markets' total monthly payments under the lease, including CAM charges, came to \$60,000 per month.

The lease also included a clause stating that the "tenant shall operate the business under the trade name Foodtown." It further provides that the tenant has 15 days from execution of the lease to obtain approval from the Board of Foodtown to operate a Foodtown supermarket at the premises, and in the event that the tenant fails to obtain such approval and provide landlord evidence of same, either party may terminate the lease without penalty.

As part of the negotiations for the lease with Pine Plaza, RL Markets agreed to purchase shelving and cases for all departments such as seafood, deli, produce, dairy, and frozen foods, which had been left in the store by Pathmark. RL Markets agreed to pay between \$35,000–\$50,000 for this equipment.

Funding for the operations of RL Markets came primarily from assets of Victor and Josephine Laracca and the V&V and Oliva businesses. Additionally, RL Markets received \$100,000 from Michael Levine, a personal friend of Roberto Laracca, in April of 2013. This was according to Roberto Laracca a loan, which was supposed to be paid back. There is no written documentation of the loan, which has not been paid back.

In January of 2013, Victor and Roberto Laracca met with Michael Donofrio, managing director of member business services and lending for Affinity Federal Credit Union (Affinity). They met at the Whippany location, and discussed financing for the store operations. Donofrio looked around the store and asked what the equipment was worth. Victor explained that it was an existing market, and a lot of the equipment can stay there, and there was value in the store. Donofrio asked the Laraccas "how much money do you need?" Victor asked for \$600,000, agreed that he would cosign personally for the loan along with RL Markets, and that his other companies, V&V and Oliva, would be guarantors. There was also discussion of

combining the amount with refinancing of Oliva's existing loan with Mariners Bank.

Ultimately the negotiations resulted in a tentative agreement for a loan of \$600,000. This was memorialized in a document dated June 1, 2012, signed by Donofrio, entitled conditional loan sheet. It reflects that the agreement was for a \$600,000 revolving line of credit, and the purpose of the loan was "to organize assets and initial inventory for a new supermarket to be opened in Whippany, New Jersey. This line shall be termed out under a combined refinancing of existing debt held by Mariners Bank and this line of credit."

The letter was addressed to Victor Laracca, managing member, RL Markets. The letter states that the coborrowers of the business were RL Markets and Victor Laracca, individually and guarantors were Oliva and V&V.

Thereafter, according to Victor Laracca, he made numerous calls to the bank trying to find out what was happening with the loan, but got no response from the bank. At one point, Laracca was told that Donofrio had been fired, and at another point, Laracca dealt with Ms. Nunez from the bank who came to the store again, looked at it, and informed Laracca that the bank was still willing to do the loan, as per Donofrio's June 1, 2012 contract loan sheet.

However, Laracca asserts that the bank never got back to him, and he subsequently was informed that Ms. Nunez had left the bank as well.

At that point, according to Laracca, he decided to go elsewhere to obtain the funds and as he testified, "we went to Mariners Bank." In that regard, they had an outstanding loan of \$850,000 to V&V, Oliva and Victor and Josephine Laracca individually secured by the three properties in New Jersey owned by the Laraccas in existence at that time. Victor went to Mariners Bank and restructured that loan and obtained a loan of \$400,000 to RL Markets. This loan was guaranteed individually by Victor and Josephine Laracca, and secured by the assets of V&V and Oliva, and by mortgages on these properties owned by Victor and Josephine.

The loan agreement with Mariners Bank and RL Markets was executed on December 17, 2012, and the \$400,000 was given to RL Markets and was used by RL Markets primarily to pay bills to the contractors for construction of the store, which had started in early 2012, and continued until shortly before opening in May of 2014.

The prior payments to Coldstat for construction work at the Whippany store on behalf of RL Markets were made directly by Oliva to Coldstat. Similarly, Oliva paid bills directly on RL Markets' behalf to other vendors and contractors, including Evans Architects for design work on the store, payments to A&J Refrigeration for work at the store, payments to Marca Lopez for floor cleaning and to JBR Telecom for telephone service at the store.

Additionally, Oliva made payments on RL's behalf to Pine Plaza (the landlord) for RL Markets' Lease, and directly made the monthly payments on RL Markets' loan to Mariners Bank from its inception in December of 2012, until May of 2014 when the Whippany store opened.

The Pine Plaza lease had a 4-month grace period, so no lease payments were due for the first 4 months. RL Markets then

commenced paying the landlord for lease payments for 3 months. However, according to Roberto, RL Markets could not afford to continue these payments after that because the Whippany store was still not yet open, and generating no money and he could not “tap into his father’s company anymore.” On February 26, 2015, after an eviction proceeding brought by the landlord, RL Markets entered into a settlement with Pine Plaza, providing for the payment of \$1,483 million of back rent, in accordance with schedule of payments per month, including a payment of \$39,700 by January 23, 2015. The settlement was signed by Marco Laracca Esq., as tenant’s attorney, and signed by Victor Laracca, as tenant (RL Markets).

In April of 2014, shortly before the Whippany store was about to open, it was necessary to obtain funding for the purchase of groceries from C&S Wholesale Grocers, Inc. (C&S) to stock the store. On April 24, 2014, a promissory note was signed for a loan of \$350,000 to RL Markets and V&V, which was personally guaranteed by Victor and Josephine Laracca and signed by a mortgage on a condominium in Hoboken, New Jersey, jointly owned by Josephine and Daniella Laracca. Victor Laracca also gave Roberto between \$50,000 and \$75,000 before the opening of the store to purchase equipment.

As noted above, Patricia Hicks was the bookkeeper for all these entities, V&V, Oliva, and RL Markets. Hicks initially worked at an office at the Cedar Knolls, Oliva store, until that store closed. During this period of time she performed bookkeeping functions for both V&V and Oliva, although she was paid only by Oliva. Once Oliva closed in December of 2014, as will be described more fully below, Hicks then began receiving pay from V&V.

Hicks began performing bookkeeping functions for RL Markets once RL Markets began operating, years before the store actually opened. Thus, Hicks completed the financial documents necessary for RL Markets to operate, such as opening bank accounts, setting up credit card accounts, and applying for various licenses. Hicks did not receive any salary from RL Markets at any time. Hicks also was signing witness on RL Markets’ patronage agreement with Allegiance and RL Markets’ loan with V&V.

After Oliva closed the store in February of 2014, Hicks moved to the Whippany store of RL Markets and worked in part of that office, as bookkeeper for all three Laracca entities. Victor Laracca, who also had an office at Oliva’s Cedar Knolls location, also now has an office at Whippany. Neither Victor, Oliva, or V&V pay any rent to RL Markets for use of the Whippany office, even though Victor and Hicks conduct business for V&V and Oliva from that office.

While Hicks was performing bookkeeper functions for all three entities, she would allocate monies of the bank accounts at her direction often without authorization or approval from either Victor or Roberto. At times, neither Roberto nor Victor knew from which account Hicks made payments to pay bills.

Hick’s duties for all three companies were to process payables, pay vendors for foods and services, keep files and records, and allocate money between the various banks accounts of all three companies. In this regard, Hicks trained and supervised Daniella Laracca as a part-time bookkeeper at the Cedar Knolls and the Whippany stores.

Bank accounts for V&V, Oliva, and RL Markets were opened at the TD Banks and Santander Bank, where Hicks and Victor were authorized signers for the Oliva and V&V accounts, and Roberto and Hicks were authorized signers of the RL Market Accounts.

Accounts were opened with Affinity Credit Union for Oliva, V&V, and RL Markets in an attempt to secure a loan through Affinity. After RL Markets failed to obtain approval for financing through Affinity, Oliva and V&V accounts at Affinity were closed. Additionally, both RL Markets and Oliva used the same accountant and insurance agent. When the Whippany store opened, it used the same payroll service as the Cedar Knolls and Lake Hiawatha store. At some point after the Cedar Knolls store closed, the payroll provider for the Whippany and Lake Hiawatha stores was changed.

Victor Laracca managed the planning and construction work over a more than 2-year period at the Whippany store. Victor Laracca was the main contact person with the contractors used by RL Markets, as well as with the township of Hanover. For example, in construction permits filed with the Hanover Township, for work at the Whippany Supermarket by Breeson Protection Company for the installation and electrical work on existing fire alarms and installation of a new burglar alarm, Victor Laracca is listed as the owner.

Victor Laracca and Roberto Laracca met with representatives of Evans Architects and Lind International Design in early 2012, to formulate a design plan for the Whippany store. The proposed alteration plan filed with Hanover Township by Evans Architects lists the proposed alteration for a Super Foodtown at 831 Route 10 East, Whippany, New Jersey as the address. Emails in February of 2012 amongst Victor Laracca, Lind Design, and Ion Sarkasian, from Coldstat Refrigeration, the General Contractor, evidences that the store at that point was being referred to as Super Foodtown.

For example, on February 21, 2012, Patti Hicks sent an email to Ion Sarkasian of Coldstat, on behalf of Victor. The subject is Whippany and it is titled proposed plan. The message reads “Ion, Attached is the latest plans for the Whippany store. I like them. What do you think? Victor”

Additionally, on February 28 at 2:03 pm, Sam Barmans from Lind Design sent an email to Victor Laracca, subject Super Foodtown, Whippany, New Jersey, wherein he states: “Hi Victor, Attached is a copy of the revised plan that has been updated as per our meeting last Friday.”

The next morning, February 29, 2012, Barman sent an email to Sarkasian, at 9:31 a.m., with a Subject of “Super Foodtown, Whippany, New Jersey,” which reads, “Hi Ion, attached is a copy of the fixture plan that was sent to Victor yesterday.”

At 11:01 on February 29, 2012, Hicks sent a similar email to Sarkasian, attaching the revised plan for the store, which also refers to the store as Foodtown, Whippany New Jersey, and the email reads “Ion, attached is revised fixture plan.”

On March of 2012, Roberto and Victor met again with the architect, and informed him that the new store would be called “Farmtastic.” Thereafter, the architect prepared a design plan, with the logo “Farmtastic Market” on the store. Interestingly, on this plan, the document states “client, super Foodtown Whippany, N.J., and Foodtown Whippany, N.J. elevations.”

On March 28, 2012, Sarkasian emailed Hicks at 8 a.m. and asked, "Could you get Victor to give you the name he wants to use on the new paperwork for the new store?"

Hicks responded at 12:01 p.m. to Sarkasian. She stated, "Ton, the company name is RL Markets I, LLC. Responsible party is Roberto Laracca store track name is Farmtastic Markets. Mailing address is 4 Lafayette Court, Whippany, N.J. 07981."

The construction and renovations at the store, by Coldstat, began in 2012, and continued through the end of 2013. RL Markets revised the construction plans to include loans for additional building and electrical work on a Pharmacy in October of 2013.

On January 22, 2014, Julia Lee Piscitelli of the Hanover Township Health Department sent the following email to Sean Donlon, a Hanover Township official, with the subject, Farmtastic Market. It reads; "Sean, a pre-operational inspection was conducted at Farmtastic on 1/21/14. Health Department has approved opening. I specifically advised Victor LaRocca that all other departmental approvals were required before he opened."

On January 23, 2014, Hanover Sewer Authority (HAS), determined that I would not approve the occupancy of the Farmtastic Store until problems were resolved, relating to grease traps and separation of wastewater streams.

Over the next several months emails and plans were sent between Mike Wynne, an official of HAS, Kevin Antonelli, a representative of Pine Plaza, the landlord, Hicks, Sarkasian, and Evans Architect's, recording the plans for Farmtastic to meet HSA's requirements and obtain approval for occupancy. For example on February 27, 2014, Antonelli sent an email to Wynne, with copies to Hicks and Sarkasian, with subject, "Pine Plaza, Farmtastic sink approval letter." It reads, "Mr. Wynne, per your conversation with Victor, I am attaching our letter of approval for the sink in the coffee shop."

Meanwhile Victor and Roberto met with the ex-mayor and the Building Department in an attempt to get temporary permits.

On December 30, 2014, Roberto wrote to the Building Department requesting permission to allow stocking of the Whippany Store, while the necessary repairs were being made to correct the deficiencies uncovered in the inspections. He noted the store will not be open to the public until the corrections were completed.

This request was granted, and after Farmtastic received its temporary permits on March 3, 2014, it began to stock the store with merchandise.

On May 2, 2014, HSA wrote to RL Markets, stating that the grease trap and maintenance requirements had not yet been reviewed by HSA's Manager, and that needed to be done, plus payment of supplemental inspection fees, before occupancy could be authorized.

On May 5, 2014, Wynne sent an email to Antonelli, reporting that Farmtastic paid their inspection bill and an appointment was being set up the following day to review the grease trap OBM requirements.

On Tuesday May 6, 2014, Antonelli emailed Wynne as follows, "re-Farmtastic." "According to UPS they delivered the

check this morning. Can you please advise if this clears our part up on Victor opening tomorrow and is he in the clear on his matters with you also?"

Farmtastic opened for business on May 7, 2014.

Sharon Shepherd has been employed at the Lake Hiawatha store for 12 years. She was the deli manager, and was and is a member of the Union. Sheppard testified that about 3 years before the Whippany store opened, she heard that the Laraccas were opening a store in Whippany, New Jersey. Sheppard assumed that the store was going to be another Foodtown, since the Laraccas already had two Foodtowns (V&V and Oliva). Shortly thereafter, Sheppard spoke to Roberto Laracca, who was at the time the store manager at the Lake Hiawatha store. Sheppard said to Roberto that she had heard that they were opening a new store in Whippany. Roberto answered, "yes we are." Roberto did not say, nor did Sheppard ask, whether the store would be a Foodtown, but Sheppard assumed that it was going to be a Foodtown, since both the Cedar Knolls and Lake Hiawatha stores owned by the Laraccas were Foodtown.

About a year later, Sheppard had another conversation with Roberto, and she asked him if the new store in Whippany was going to be a Foodtown and if it was going to be nonunion? Roberto replied that the store was not going to be a Foodtown, and it would not be a union store.

Shortly after that conversation, Sheppard found out that the name of the new supermarket was going to be Farmtastic from one of the butchers working at Lake Hiawatha, who informed her that his son had made the sign for the Farmtastic store. This conversation, according to Sheppard, was about a year before the Whippany store opened.

Over the next year, Sheppard had several conversations with Roberto about the Whippany store. She would ask him how things were going with the new store, and how much sooner until it would open. Roberto responded that "we ran into problems, and it's going to be open soon." During these conversations, Sheppard would ask Roberto if he was going to be leaving the Hiawatha store and go over to the Whippany store, because she liked Roberto, and liked him as manager at Lake Hiawatha. Roberto initially answered that he did not know if he was going to go over to Whippany and that they were thinking about it.

About 6 months before the Whippany store opened, Sheppard asked Roberto again, if he was going over there. Roberto replied yes, "it's my store, I'm going over there." Roberto did not say specifically if he was going over there as owner or manager.

Victor Laracca lived in Whippany, New Jersey, for many years, coached soccer for many years, and was known by a lot of people in Whippany. Victor testified that 40 percent of the people in Whippany knew him. In fact, Victor further testified that one of the reasons why the Cedar Knolls store was taken over by him was because he received over 60 phone calls from people in Whippany, telling him that the store in Cedar Knolls was bankrupt, and asking him to please open up that store. Victor stated that he believed that the Cedar Knolls store could do well, so he decided to take a shot "doing" the store.

In early 2013, Mike Piscitelli, business agent for Local 464A, during visits to the Cedar Knolls store, was informed by

Cedar Knolls employees that customers and vendors were telling these employees that their store was closing and that they were going to be going over to the Whippany location.

Prior to Thanksgiving in 2013, customers at the Cedar Knolls Store told employees there, including Carol DiMarsico, who was employed at the Cedar Knolls Store as a deli clerk, that the store was closing and the employees would be moving to Whippany. DiMarsico told the customer that they were not moving, and were staying where they were. Subsequently, DiMarsico spoke to the same customer again, who again informed her that "You're going to Whippany." DiMarsico replied, "Why are we going to Whippany, we have no inkling of going to Whippany." The customer informed DiMarsico that at a senior citizen meeting in Hanover township, it was announced that the Cedar Knolls Foodtown was moving to Whippany on Route 10.

As I have detailed above, the name for the Whippany Store was not chosen until late March of 2012. Initially, the store was going to be a Foodtown, as evidenced by the initial architect plans and documents for the store. However, in March it was decided that the store would not be a Foodtown, and that it would be called Farmtastic.

The collective-bargaining agreement that was in effect between the Union and Oliva when the Cedar Knolls Store closed was negotiated in March of 2012. The negotiations were conducted by representatives of Allegiance Retail Services, which is a co-op, consisting of members of Employers, primarily Foodtown Stores, but also including other supermarkets, and brands.

David Maniaci, Chairman and CEO of Allegiance, testified about Allegiance, as well as detailing the bargaining history with the last two unions, and the last contract negotiations, that led to the collective-bargaining agreement in existence between Oliva and Local 464. Allegiance is a retail co-operative that offers services to independent operators of supermarkets in New York and New Jersey. It has about 23 members, with about 90 supermarket locations owned by the members.¹ Allegiance provides marketing, advertising, technological and operational support, as well as a full line of Foodtown private label products to its members. Allegiance prepares weekly circulars for all of its members, and members honor the same club card for the purpose of customer discounts.

Allegiance stores have the option of using the Foodtown banner and/or selling Foodtown private label products but they are not required to do either. About 80 percent of the stores in Allegiance are Foodtown Stores, and the rest are other supermarkets. The non-Foodtown Stores use the same circulars prepared by Allegiance, which include Foodtown products, and a store must belong to the Allegiance Co-op in order to sell Foodtown products or to operate under the Foodtown banner.

The non-Foodtown Supermarkets that are members of the co-op sell Foodtown products, but are not Foodtown Stores and

do not use the Foodtown banner. These Supermarkets are mostly independent operations with names such as Freshtown, Uncle Giuseppe's, Labella Marketplace, Orchard Fine Foods, Big Deal Food Market, as well as D'Agostino's stores in New York City.

According to Maniaci, previously the Co-op was not called Allegiance, and was composed of only members of Foodtown Stores. Subsequently a number of Foodtown stores went out of business or were brought out by Stop & Shop. Thus, Allegiance was formed, and other non-Foodtown Supermarkets were permitted to join the Co-op.

Collective bargaining for the stores was conducted by the Co-op's representatives with both Local 1262 and Local 464. In prior years, negotiations with the Unions were conducted along with representatives from other large supermarket chains, such as Shop Rite, Pathmark, and Grand Union. The contracts were essentially the same for all supermarkets, with some minor deviation.

Maniaci testified, as noted above, that the number of Foodtowns had substantially decreased, and by the last round of negotiations the number of Foodtown stores in New Jersey had been reduced to 12. All of the Foodtown stores were bound by the previous contract. According to Maniaci, if an owner opened up a new store under the Foodtown banner, it would be bound to apply the contract to employees at the newly opened store.

According to Maniaci, the individual members gave notice to both Local 1262 and Local 464 that they no longer wanted to negotiate together as Foodtown, but that they wished to negotiate separately with the Unions. Local 1262 accepted the notice and, according to Maniaci, negotiated separate contracts with each of the stores under their own Company name, and not under Foodtown.

However, Local 464 did not accept the notice and, according to Maniaci, the attorney that represented the Co-op missed the deadline for filing by a day or so. Therefore, the attorney advised Maniaci that for the last contract they had to negotiate collectively for a contract covering all the Foodtown stores.

The negotiations resulted in a memorandum of agreement for a new contract, and was executed on April 12, 2012. The MOA reflects that the terms of the prior agreement would be continued, with the exception of certain changes set forth in the MOA in various areas, such as wages, vacations, pension welfare benefit payments, and contract language.

The effective dates of the new agreements were March 18, 2012, and expiring on June 18, 2016.

While the MOA was signed by a representative of Foodtown Supermarkets, it also stated that it covers all individual employers trading as Foodtown for two companies, NEI and V&V.

Initially, Victor Laracca did not wish to be bound by the MOA, and the new contract, for his two companies, V&V and Oliva, and he complained to Maniaci that the contract was too rich and that he did not want to go along with it, because he thought that Maniaci should get a better deal. Victor Laracca testified that "we could not afford it, we still can't."

During the course of negotiations for this contract and the MOA, Victor Laracca had discussions with Mike Piscatelli,

¹ A member of the Co-op can operate more than one supermarket location. For example Maniaci himself operates three Foodtown Supermarkets located in New Jersey. Victor Laracca, as noted above owned and operated the Foodtown Markets in Cedar Knolls and Lake Hawartha, New Jersey, and was a member of the Co-op.

business agent for Local 464 in Laracca's office at the Cedar Knolls Store. Laracca complained to Piscatelli that the agreement negotiated with Foodtown, was essentially the same contract that the Union had with Shop Rite, and Victor felt that Foodtown should not have the same type of contract as Shop Rite; particularly with regard to benefits and raises.

After Victor told Maniaci that his companies (V&V and Oliva) did want to go along with the new contract as agreed upon in the MOA, the MOA was signed excluding Victor's companies from the agreement. After discussing the matter with his attorney, Victor reconsidered and decided to go along with the contract negotiated as set forth in the MOA, signed on April 12, 2012. Thus, on April 13, 2012, Victor Laracca sent out a letter dated April 13, 2012. It reads: "Re. V&V Supermarkets aka Foodtown Hiawatha, Foodtown Cedar Knolls."

"Please accept this letter as confirmation that the above named companies accept the collective bargaining agreement between Local 464A and Foodtown effective March 18, 2012 through June 18, 2016." The letter was signed "Victor Laracca, President." As noted above, Oliva abided by the terms of the contract until it closed the Cedar Knolls Store in late February of 2014.

Maniaci testified that he was informed by someone at the Allegiance Co-op that Victor's Cedar Knoll's Store was going to close and that Roberto was going to open up a store in Whippany at the old Pathmark. He was also told that the Whippany Store was not going to be a Foodtown. He and the other Co-op member who informed Maniaci about this decision discussed that they were more surprised that the new store was not going to be a Foodtown, but no reason was given for the decision, other than Roberto wanted to open the store up as a Farmtastic Supermarket. Maniaci was disappointed that the new store would not be a Foodtown, but he did not discuss it with Victor or Roberto.

Both Victor and Roberto admitted that they were aware, as Maniaci testified, that if the Whippany Store was opened as a Foodtown, the new store would be obligated to recognize the Union and apply the terms of the contract to the employees employed in the categories covered by the Local 464 contract.

Roberto testified also that he could not afford the Local 464 contract, but also insisted that the decision to use the Farmtastic name for the new store was not based on a desire to avoid the union contract, but rather because he did not want to be a Foodtown and wanted a new, fresh name, with emphasis on organic products for his new store.

As I have detailed above, from the time that RL Markets was formed, until it opened the Farmtastic supermarket in May of 2014, the market was not opened for business, and RL Market had no income. However, funding for RL Market for construction costs, lease payments, fees to architects, and purchases of supplies had to come from somewhere, and it came from Oliva, V&V, and the personal guarantees from Victor, Josephine, and Daniella Laracca and their properties. Although Roberto Laracca testified that the funds provided to RL Markets by V&V, Oliva and the Laracca family were loans, there is no documentation memorializing an agreement for repayment of any of these monies, and there is no established time for repayment. Further, there is no agreement that RL Markets is required to

pay any interest to Oliva, V&V, or the other Laracca family members for these alleged loans. Oliva's 2013 tax return did list as an asset a \$548,448 loan to RL Markets.

Victor Laracca testified concerning the financing for RL Markets, and the loans that were taken out by RL Markets, guaranteed by V&V, Oliva, and the Laraccas personally, as well as their properties. He testified about the loan from Marimer's bank: "So anyway, we took the loan and we pursued the construction for RL Markets Farmtastic Supermarket." Testifying about his problems obtaining approvals from the Hanover Building Department to open Farmtastic, Victor stated, "we had this problem with sewage and so . . . I said, look, Roberto, my son we have no more money." Victor then stated that "[w]e spoke to the building Department and said look, can you give a, what do you call it, a permit for this right away?" He continued, ". . . now we have the temporary Co. . . and C&S does not want to delivery [sic] groceries." After Victor went "back and forth and back and forth for a few weeks" trying to get a loan from C&S for the initial inventory at Farmtastic, Victor's wife and daughter put up their condominium as collateral to procure the loan. Victor admitted that Roberto did not have the ability to secure financing without help. In his testimony, Victor summarized the "help" that Roberto received from his family:

So at this point, if RL Markets gets in big, big trouble, which it's already in, I will lose everything that I have. I'll tell you what I have as collateral. I know it's in the files, but I want to explain.

We have—I have a house, my wife has a house in Parsippany that we've had. That's been put in as collateral, she put it in as collateral. There's a piece of property in Parsippany also and that was put in collateral. We have the shore house. That's been put in collateral. And the two businesses that we had at the time, those were put in collateral.

My daughter has also put in her house or a town house in collateral. So those properties will probably all be gone if he—if they foreclose on him, everything will be gone. There's no equity right now because everything is being mortgaged, basically, there's nothing.

And to be quite honest with you, I'm – right now I'm thinking the only solution I have is to try and sell V&V store, get some funds to pay off whoever I've got to pay off to get them off my back and see what I can do because I can't—if everybody starts foreclosing on me, we'll be out of business very quickly.

C. The Closing of Oliva

Victor Laracca testified that he had no intentions of closing the Cedar Knolls Store, and it was always his intention to continue operating that store, even after the RL Markets Whippany store opened. According to Victor, the closing of the Cedar Knolls store was solely due to his failed attempts to renew the lease for the store. In that regard, the lease for the store was between Stop & Shop and the landlord. After Stop & Shop left the store, a Foodtown operator, Mickus Brother's, took over the store, and then took over the lease. When that Foodtown opera-

tor went into bankruptcy, and closed the store, Oliva purchased the assets of the store, and became a sub-lease on the lease, between Stop & Shop and the landlord. The lease was set to expire in January of 2014.

In June of 2013, Victor contacted Victor Spina, a representative of the landlord who managed the property to discuss negotiations for a new lease. This was to be a lease directly between Oliva and the landlord for the property.

On September 17, 2013, Oliva emailed Spina a proposal for a lease of the property at Cedar Knolls. The proposal was for a 5-year lease with payments ranging from \$31,000 to \$34,564.73 per month, plus a ranging percentage of the store's annual sales. Victor testified that he spoke to Spina several more times over the next few months, and Spina finally informed him that his offer was not enough, but did not come back with a counter offer.

In a subsequent conversation with Spina, Victor was apparently told that the landlord was not interested in a long-term lease agreement, but might be open to an extension past the January 2014 expiration. Victor sent an email to Spina, dated October 25, 2013, summarizing both parties' positions. It reads, "As per our previous conversation regarding the lease for Foodtown at the Cedar Knolls Plaza, you have indicated that your firm is not interested in a long term lease agreement, but that you might be open to an extension past the January 2014 expiration. I am interested in an extension for as long a period as your firm is willing to extend. I previously gave a lease proposal of \$31,000 per month. If this is not an acceptable rate, please provide a rental rate that you will accept or call to discuss, 473-610 16-6."

According to Victor, he had heard that the landlord was negotiating with Walmart to put a "Super Center" into the mall, which includes a supermarket. Renewing Victor's lease would have contractually precluded the landlord from leasing the space to Walmart in the same mall. Victor testified that he was not sure that the deal with Walmart would go through, so he was hoping that a month-to-month extension with the landlord would lead to a long-term lease, in the event that the Walmart deal was not agreed upon. Victor testified that the landlord was refusing to renew the lease for Rite Aid, the tenant at the mall, in furtherance of the same desire of the landlord to have Walmart open a superstore which would also include the space occupied by Rite Aid, as well as the space occupied by Oliva. Victor further testified that Walmart decided not to open the superstore, and ultimately both Rite Aid and Oliva left the mall, and both properties are still vacant and unrented as of the close of the hearing.

On December 19, 2013, Victor sent the following email to Spina:

"I am prepared to pay 45,000.00 per month including taxes and charges. This is pushing it considering what is transpiring in the cases please respond."

According to Victor, shortly after this offer was made, he had a pleasant conversation with Spina during which Spina, on behalf of landlord, agreed to the 45,000 per month offer for an extension. However, this alleged agreement was never reduced to writing.

On January 24, 2013, the Respondent received a letter in-

forming it that it needed to vacate the premises on January 31, 2013. Victor asserts that he then had a conversation with Spina and asked him what had happened with the lease, saying to him "I thought we had a deal." Spina informed Victor that the owner decided not to do it. Victor testified that he discussed with Spina an amount of \$50,000 per month, with 2-month notice to vacate, in order to properly remove equipment and product. According to Victor, Spina agreed to this proposal, which Victor summarized in an email to Spina as follows: "As per our recent agreement I will pay \$50,000 per month on a month-to-month basis. I agree to the present lease terms so far as removal of equipment and products. Any damage caused by the removal I will repair. The rental of \$50,000 should help to defer the cost of any other removal issues. I would like 2 months' notice if possible when I need to vacate the premises in order to remove equipment and product." This alleged agreement was never reduced to writing.

Subsequently, Oliva was subject to an eviction proceeding. During this proceeding the judge ordered that Oliva vacate the premises by March 31, 2014, and to pay \$50,000 per month rent until that date.

In mid-February of 2014, Oliva posted a sign in its store that the store will be closing on February 22, 2014. The store closed on that date. Over the next month, Oliva spent time taking out the equipment and cleaning up the store, and left the premises on March 31, 2014, as per the judge's order in the eviction proceedings.

Frantz Hanley is the Recorder for Local 464. That position is the second in command at the Union Local, under the Union's president. Hanley telephoned Victor Laracca in early January of 2014. Hanley told Victor that he had heard that Victor was opening a new store in Whippany. Victor replied that there would be a new store opening in Whippany, but it would be his son Roberto's store, and Roberto would be the owner. Hanley asked Victor whether the Whippany supermarket would have meat, deli and seafood departments. Victor replied that the store is going to be more like a farmers market, but that it would have a meat department, deli department, and a seafood department.

Hanley responded that the Union expects that the deli, meat, and seafood employees at this store will be represented by the Union. Victor replied that "we do not intend to and this store is not going to be union. It is not our intent to have this store union. We can't afford it." Hanley answered that according to the collective-bargaining agreement when you open a new store, just like he's done in the past when he purchased stores, through accretion, they automatically become union stores.

Victor repeated that the store was going to be nonunion. Hanley stated that he thought they had a problem: You know you disagree with me and I disagree with you.. Victor then told Hanley that he should call Roberto and talk to him, since he is the owner of the Whippany store.

Shortly after this conversation Hanley had a conversation with Maniaci. Hanley informed Maniaci that if Victor opened up a new store nonunion without a contract, then the union was going to picket the store. Maniaci replied asking why Hanley was "breaking their chops?" Maniaci asked why are you harming the father because it was his son's store; and Roberto had

only one store. Hanley responded that it was nothing personal, but if he let one go others would follow. He added "you know what if I had 10 non-union Farmtastics in New Jersey."

My findings with respect to these conversations are based on a compilation of the credited portions of the testimony of Hanley, Victor Laracca, Maniaci, and Hicks and employee Alan Hatten, who heard Victor Laracca's comments in his phone conversation with Hanley.

I credit Victor Laracca, corroborated by Hicks, that Victor told Hanley that the Whippany store was Roberto's store, and that he (Hanley) should contact Roberto. Similarly Maniaci also told Hanley that it was Roberto's store. I therefore do not credit Hanley's testimony that he didn't know that the Whippany store was Roberto's store at that time.

However, I do credit Hanley that Victor told him during this conversation that the Whippany store was going to be nonunion, and that we cannot afford the union contract. I note that Maniaci's testimony implicitly corroborated Hanley's testimony in this regard inasmuch as Hanley told Maniaci that if he (Victor) opens the store nonunion that the union was going to picket the store. That testimony is supportive of Hanley's testimony that Victor informed that the store was not going to be union. Further, employee Allen Hatten recalled Victor telling someone on the phone "there's going to be a store and it's not going to be unionized." I find this testimony also supportive of Hanley's testimony in this regard.

Finally, I also rely on the fact that, as will be described more fully below, it had been decided by the Laraccas that the Farmtastic store would not be a union store, because they could not afford the union contract. I therefore find it likely that Victor would have informed Hanley of the decision when Hanley requested that the Farmtastic store recognize the union and apply the contract.

D. The Opening of the Farmtastic Store

As detailed above, the Farmtastic store in Whippany opened for business on May 7, 2014. As also related above, the opening was delayed due to construction issues. It was expected that it could be opened in February 2014, but additional problems resulting from a failure to pass inspection due to grease trays and separation of waste water and trash caused additional delays to rectify these deficiencies. Finally, the problems uncovered in the inspection were corrected, all fees due to the township were paid, and RL Markets was permitted to open the store on May 7, 2014.

As also detailed above, the Cedar Knolls store operated by Oliva closed on February 22, 2014, and left the premises on March 31, 2014, after disposing of equipment and cleaning out the store pursuant to the order of the Judge.

According to testimony of Roberto Laracca, he initially believed that the Whippany store would be opened much sooner than May of 2014, but construction delays, including a failure to pass final inspection by the Township, caused the opening to be delayed until May 7, 2014.

Roberto testified that he had a website set up for hiring of staff in early 2012, and received a number of applications. He asserts that he in fact hired a number of cashiers from the website, in 2012, but never completed the process of the hiring

since the construction delayed the opening and all the applicants were students, whose availability was uncertain. Respondent did not produce any job applications or any documentary evidence reflecting the alleged hires, although it was subpoenaed by the General Counsel.

Prior to the closing of the Cedar Knolls store, sometime in January of 2013, Bruce Shivas, who had been deli manager for Oliva at the Cedar Knolls store, had conversations with Victor Laracca about the problems Victor was having with the landlord. Victor informed Shivas that he was in discussions about extending the lease on the store with the landlord, and the landlord is resisting, and they had not reached any agreement. Victor also told Shivas that if he could not extend the lease, he would have to close down the store. Shivas testified that the Rite Aid store which was in the mall had already closed because the landlord wouldn't renew its lease.

When Shivas found out that the store would be closing in mid-February of 2014, he approached Adam Shapiro, the store manager at Cedar Knolls. Shivas was aware that the Whippany store was going to open up and that it was going to be named Farmtastic, and that Roberto was going to be the owner of that store. Shivas asked Shapiro what he was going to be doing in view of the fact that Cedar Knoll was closing. Shapiro told Shivas that he was probably going to go over there as manager. Shivas replied that in order for him to take a manager job, he would need a decent wage and insurance. Shapiro answered that if he knew anything he would let Shivas know.

A couple of days before the Cedar Knolls store closed, in late February of 2014, Roberto approached Shapiro and asked him to be the store manager at the Farmtastic store. Roberto told Shapiro that he had done a good job managing the Cedar Knolls store for Victor and, although he (Roberto) didn't know when the store would open, if Shapiro could hang on a little while, Roberto would hire him as manager. Shapiro responded negatively at first. He told Roberto that he wanted to get out of the supermarket business, and was considering buying a Snyder's pretzel route. Shapiro added he was tired of the supermarket business, and was very upset about the Cedar Knolls closing. Shapiro noted that he had been employed at that store even before it was taken over by Victor, when it was owned by the previous Foodtown owner.

Over the next few days, Roberto sent texts to Shapiro, asking him to reconsider, and telling him that he really wanted Shapiro to come to work at Farmtastic. During this time, Shapiro also received texts from Daniella Laracca with whom Shapiro was friendly, asking him to accept the offer to be the manager at Farmtastic.

Shapiro then discussed the issue with his father and his wife. His father gave his opinion that the Snyder's route was very expensive, around \$300,000, and pointed out that Shapiro's son is only 6 or 7 years old. Shapiro's wife suggested that he should accept the job as manager, and if it didn't work out, he could go buy a Snyder's route.

Shapiro was at that point still working at Cedar Knolls, helping out with the shutdown of the store. Shapiro then discussed the issue with Victor. Shapiro told Victor I guess you know that your son offered me a job at his store. Victor replied that he knew. Shapiro told Victor that he wanted to buy a Snyder's

route, and informed him of what his father had said to him. Victor responded that there was always going to be a Snyder's route available, and added that Shapiro loves this business, it is in Shapiro's heart and in his blood and that Snyder's is a whole different business. Victor said that Shapiro should do what he wants to do, but that Victor didn't think it was a bad idea to accept the position as manager at Farmtastic.

After that conversation, Shapiro spoke to Roberto and informed him that he would accept the job. Roberto asked Shapiro what salary he was making at Cedar Knolls. Shapiro told him his salary, and Roberto said that he would offer Shapiro the same salary at Farmtastic, and the same benefits, including health insurance. Roberto told Shapiro that he didn't know when the store would be opening and he would get back to Shapiro when he knew more. They didn't discuss hiring of staff at that time.

Over the next 2 months, Shapiro received phone calls from a number of Cedar Knolls employees, who had been laid off, and who informed Shapiro that they had applied online for positions at the Farmtastic store in Whippany. Shapiro confirmed to these employees, who included both employees in the Local 464 bargaining unit as well as employees in the Local 1262 bargaining unit, that he was going to be the store manager at Farmtastic, and that he would get back to them when the hiring process was ready to begin.

Shapiro then went on unemployment, as did a number of the other former Cedar Knolls employees. Some of them obtained jobs at other supermarkets.

In early April of 2014, Roberto informed Shapiro that the store would be opening soon, and they went down to the Whippany store to discuss staffing. Shapiro looked over the store and talked with Roberto about staffing and recommended how many and which employees he would need. Shapiro had looked over the online applications and had as noted spoken to a number of Cedar Knolls employees on the phone, who had expressed interest in working at Farmtastic. Roberto informed Shapiro that he was just starting out, and that he could not "give the world" to the employees. Shapiro replied that he would look at it, and see what he could do. Thus, Shapiro determined what salaries to offer the employees, as well as the benefits. Shapiro asked Roberto about health care and Roberto replied that he would offer health care only to full-time employees. Roberto also informed Shapiro that the store was not going to be a union store.

Later on in April, Shapiro began interviewing prospective employees for jobs at Farmtastic. He began by hiring his department heads, the managers, and assistant managers. After hiring this group of employees, he moved on to the hiring of the remainder of the staff, which involved a number of part-time employees.

When he interviewed applicants both for positions in the Local 1262 and the Local 464 units, Shapiro told them the salary that Farmtastic would be offering, what the benefits would be, sick leave, vacations, and that health care should be provided only to full-time employees. Shapiro informed all applicants that the store was going to be nonunion. Most of the applicants accepted Shapiro's offer of employment at the terms that he offered them. A couple of employees didn't accept. For exam-

ple, Joseph Harris, the seafood manager at Cedar Knolls, did not accept the offer. Shapiro then offered the seafood manager position to Catherine Jaconetta, who had been a meat wrapper at the Cedar Knolls store.

Edward Campbell had been the meat department manager at Cedar Knolls, but he also declined Shapiro's offer to work as meat manager at the Whippany store. Shapiro then offered the meat manager position to Ricardo Lopez who had been employed at Cedar Knolls as a meat cutter. Lopez accepted the job.

Allen Hatten was employed at the Cedar Knolls store as a part-time employee, on the night shift. Hatten had been previously employed at the Whippany store, when it was a Foodtown, prior to its closing at that location, when it was taken over by Pathmark. Hatten then became employed at the Cedar Knolls store. He was initially employed at the Cedar Knolls Foodtown, when it was owned by the prior owner before Victor Laracca took over the store. Hatten had been a full-time employee with the prior owner, but then switched for family reasons to part time, before Victor Laracca took over ownership of the store. Thus, he was a part-time employee, with respect to employment at Cedar Knolls.

When Hatten interviewed with Shapiro for a position at Whippany, Shapiro offered Hatten the position of assistant deli manager. He offered Hatten a salary of \$15.30 per hour, which was the same salary that he was making. Hatten replied that the salary was not enough. Shapiro responded that Hatten would be getting insurance from Farmtastic. Hatten replied that he doesn't need insurance, since his wife had insurance. Hatten suggested a salary of \$16 per hour. Since Hatten was not going to need insurance, and because Shapiro believed that he was a good employee, and should receive a raise for becoming assistant manager, Shapiro agreed to Hatten's request for a salary of \$16 per hour.

Shapiro also informed Hatten, as he did all other employees whom he interviewed, that the Farmtastic store at Whippany was going to be nonunion. Hatten accepted the job. Shapiro testified that he believed that some of the Cedar Knolls employees who refused to accept his offers of employment at Whippany, did so because he told them that it would be a non-union store.

Ultimately Shapiro hired nine former Cedar Knolls employees from the Local 464 bargaining unit.

Carol Demarsico
 Alan Hatten
 Catherine Jaconetta
 Ricardo Lopez
 Pharins Paoulante
 John Sagareso
 Bruce Shivas
 Robert Taylor
 Mark Salgado

The total complement of employees in the Local 464 unit at Cedar Knolls was 12 employees.

The Cedar Knolls store included 20 employees in the Local 1262 bargaining unit, which included grocery, bakery, front end, and produce employees as well as Patti Hicks. The record

reflects that 10 of these employees were hired by Farmtastic, including Tom Bleaken, the produce manager, and Vincent Varolo, the bakery manager.

Patti Hicks, as noted above, was and still is the bookkeeper for V&V, Oliva, and RL Markets, but she has never been paid by or on the payroll of RL Markets or Farmtastic. Hicks was a longtime employee of Victor Laracca's stores, starting out at the Newark store owned by Victor on 6th Street, and then was employed at the Lake Hiawatha store and V&V and the Cedar Knolls store under Oliva. According to Hicks, she was a member of the Local 1262 bargaining unit at Lake Hiawatha and also she was the shop steward. She moved the office where she worked at Cedar Knolls in 2005. Hicks was paid by V&V until 2005 and at that time, after she began working at Cedar Knolls, she was paid by Oliva. After the Cedar Knolls store closed, she began to be paid by V & V once again. Thus, she has never been paid by RL Markets and Farmtastic although once the Whippany store opened, she has been working at that location, in the office, performing bookkeeping services for all three Laracca entities.

Daniella Laracca as noted above, assists Hicks in bookkeeping at the Farmtastic location on a part-time basis, working for her twice a week for approximately 16 hours total per week. While at Cedar Knolls, Daniella Laracca worked full time assisting Hicks with bookkeeping tasks, working on all three companies' business. When the Farmtastic store opened, Daniella Laracca was involved with running the juice bar at the store, which took up most of her time at the store. There was no juice bar at the Oliva, Cedar Knolls Store.

Hicks received her health insurance from Local 1262 and, according to Hicks, is still receiving health coverage from Local 1262, ever since the Cedar Knolls store closed.

Daniella Laracca receives health coverage through the company plan offered which covers Victor Laracca, Roberto Laracca, and Adam Shapiro. Since the Farmtastic store opened this coverage is paid for by V&V.

As I outlined above, Hicks in her capacity of bookkeeper for all three Laracca entities would transfer funds from bank accounts from one entity to another, depending on where money was needed during the time that all three entities were operating concurrently.

As also noted above, the Farmtastic store operated by RL Markets opened for business on May 7, 2014. The store had a Grand Opening on that day, which was attended by numerous representatives from Allegiance, as well as the Laracca family.

The Grand Opening was covered by the Food Trade News, an industry periodical. The issue contained a number of photographs with comments and headlines. The first page contained a picture of Roberto Laracca, plus three Allegiance representatives. The text under this picture reads as follows: "Allegiance Retail Service New Farmtastic Market Banner debuted earlier this month when the Laracca family opened its newest store in Whippany, New Jersey." The text then states "at the grand opening, Roberto Laracca of Farmtastic Market," another lists the names of the three Allegiance representatives, and states that more photos are on L.T.D.

Page 29 of the periodical is entitled, "New Allegiance Banner 'Farmtastic Market' Unveiled by Laracca Family in Whip-

pany, New Jersey." The page then includes 10 pictures of representatives of the Laracca family along with various Allegiance officials. The first picture consists of five Allegiance representatives, with the following text next to it: "Allegiance Retail Services' new Farmtastic Market debuted earlier this month when the Laracca family opened its newest store in Whippany N.J. at the site of the former Pathmark unit. On hand to make sure all runs smoothly on opening are Allegiance Retail Services (1-R)," and then named the four Allegiance officials in the picture.

The next picture is of Victor Laracca and Gino Palummo of Nebraskaland. The text reads, "Victor Laracca of Farmtastic Market is joined by Gino Palummo of Nebraskaland." Below that is another picture with Victor Laracca and an Allegiance representative. The text says, "Tony Anelo of Allegiance Retail Services chats with Victor Laracca of Farmtastic Market." Next to that picture is a picture of Roberto Laracca with two representatives from Imperial Distributors. The text reads, "Imperial Distributors' Ron Ralston and Dave Dulude congratulate Farmtastic Roberto Laracca on the new store." Another picture consists of Daniella Laracca and two Allegiance representatives plus a representative of Bimbo Bakeries. The text states that "this foursome features Daniella Laracca, Farmtastic Market," and then names the other representatives in the picture.

After the Farmtastic store opened, Victor Laracca used the Whippany office, and conducted business for V & V and to some extent Oliva from this office. Victor did not pay any rent to RL Markets for use of that office.

As I have noted above, V & V, Oliva, and the Laracca family paid money to RL Markets and guaranteed loans from banks to RL Markets and at times paid loans directly to banks and invoices to suppliers on behalf of RL Markets. While Hicks and the Laraccas contend that there were loans that were supposed to be paid back, no documents were presented which reflected any of these loans, their terms, when they were to be paid back, or what interest rate if any, was to be paid on these loans by RL Markets. The record does reflect that Oliva's 2012 tax return states under a listing of Current Assets, "loan—RL Markets \$548,948."

Victor Laracca, as detailed above, shared an office at the Farmtastic Store with Roberto and Hicks, and was there on a daily basis. He would walk around the store and give some instructions to employees, such as sweep the floor, clean aisles, or instruct employees where to unload deliveries.

Victor would also make suggestions to managers, particularly Jaconetta, the seafood manager, about products, product placement, what to order, most of which she would follow, since she was aware that Victor was very experienced and knowledgeable about seafood and she was inexperienced in that department, having worked previously in the meat department as a meat wrapper.

Jaconetta was aware that Roberto was the owner of the store, and not Victor, and that her day-to-day supervisor was Shapiro. Other Farmtastic employees who testified also clearly were aware that Roberto was the owner of the store.

Local 464 put up a picket line on the first day that the Whippany store opened, where picketing continued through the dates

of the trial. The Union made no effort or attempt to organize the employees at the RL Market's Farmtastic Store. Nor did the Union ever contact Roberto Laracca or make a demand of Roberto that RL Markets recognize the Union or apply the contract to its employees.

The Union did, as reflected above, file a charge with the Region on June 5, 2014, alleging that Oliva and RL Markets, as alter egos and a single employer, violated Section 8(a)(5) and (1) of the Act by repudiating its union contract with the Union, and by refusing to bargain with the Union and refusing to honor its collective-bargaining agreement at the Whippany location.

III. ANALYSIS AND CONCLUSIONS

It is alleged and asserted by General Counsel that Respondent RL Markets and Respondent Oliva are alter egos and alternatively that the two entities constitute a single employer. It is further alleged that, as consequence of these findings, the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with Local 464 (the Union), as the collective-bargaining representative of its Whippany, New Jersey location, and by refusing to apply the terms of its collective-bargaining agreement with the Union to its unit employees at the Whippany store.

The Board generally will find an alter-ego relationship when two entities have substantially identical management, business purposes, operations, equipment, customers, supervision, and ownership. Not all of these indicia need be present, and no one of them is a prerequisite to finding an alter-ego relationship. Unlawful motivation is not a necessary element of an alter-ego finding, but the Board also considers whether the purpose behind the creation of the suspected alter ego was to evade responsibilities under the Act. See *Diverse Steel, Inc.*, 349 NLRB 946, 946 (2007). *McCarthy Construction Co.*, 355 NLRB 50, 51 (2012); *E. L. C. Electric, Inc.*, 359 NLRB No. 20 slip op. at 9 (2010).

"Alter ego" and "single employer" are related but separate concepts. *A.D. Conner, Inc.*, 357 NLRB 1770, 1787 (2011). The factors considered in the analysis are similar with the exception of motive. *El Vocero, de Puerto Rico*, 357 NLRB 1585, 1605 (2011). In assessing single-employer status the Board focuses on four factors: (1) common ownership and financial control; (2) integration of operations; (3) common control of labor relations; (4) common management. *Rogan Bros. Sanitation Inc.*, 362 NLRB No. 61 slip op. at 3 (2015); *Spurlino Materials LLC*, 357 NLRB 1510 (2011). As with alter ego status, no single factor is controlling and not all need be present in order to establish a single employer status. It ultimately depends on all the circumstances. *Carr Finishing Specialties*, 358 NLRB 1766, 1776 (2012); *Newark Electric*, 362 NLRB No. 44 slip op. at 10 (2015). In analyzing both single employer and alter ego status, the Board also places considerable reliance on the absence of an arm's-length relationship among seemingly independent companies. *Rogan Bros.*, supra 362 NLRB No. 61 slip op. at 3; *Newark Electric*, supra 362 NLRB No. 44, slip op. at 10; *Spurlino Materials*, supra, 357 NLRB at 1517-1518; *Diverse Steel* supra, 349 NLRB at 951; *SRC Painting*, 346 NLRB 707, 221 (2006); *Carr Finishing Specialties*, 358 NLRB 1766, 1776 (2012); *Lebanite Corp.*, 346 NLRB 748 (2006);

Shane Steel Processing, 353 NLRB 522 (2008); *A & P Brush Mfg. Corp.*, 323 NLRB 303, 308 (1997); *Denzil S. Alkire*, 259 NLRB 1323, 1324-1325 (1982); *Blumenfeld Theatres Circuit*, 240 NLRB 206, 216 (1979).

In assessing both the alter ego and single-employer relationship between the entities, I initially note the Food News issue, an industry periodical which covered the Grand Opening of the RL Market Farmtastic store in Whippany, in early May of 2014. The text under the picture of Roberto Laracca with several Allegiance representatives read as follows: "Allegiance Retail Service New Farmtastic Market debuted earlier this month when the Laracca family opened its newest store in Whippany, N.J." Later on in the issue, several pictures were shown with members of the Laracca family, Victor, Roberto and Daniella Laracca along with different representatives of Allegiance or other industry officials. The text identified Victor, Roberto and Daniella as representatives of Farmtastic Market and the page is entitled, "New Allegiance Banner 'Farmtastic Market' unveiled by Laracca family in Whippany N.J."

These statements in the Food News quarterly depict the evidence disclosed on this record, that the Farmtastic store in Whippany was and is part of the Laracca family business, and that the entities are alter egos, and a single employer.

While Roberto is the owner of RL Markets and Victor is the owner of Oliva, identical ownership is not required in order to establish alter ego status of those companies. The Board has repeatedly held that ownership in different companies by members of the same family constitutes substantially identical ownership, sufficient to support a finding of alter ego status. *A & P Brush*, supra, 323 NLRB at 308; (mother and son) *Midwest Precision Heating & Cooling*, 341 NLRB 435 (2004) (father and son); *Alexander Painting Inc.*, 344 NLRB 1346, 1353 (2005) (husband and wife), *Fallon Williams*, 336 NLRB 602, 603 (2001) (husband and wife); *Industrial TurnAround Corp.*, 321 NLRB 181, 184, 187 (1996) (husband, wife, and brother); *AC Electric*, 333 NLRB 987 1001 (2001) (husband and wife); *Goldin-Feldman, Inc.*, 295 NLRB 359, 372 (1989) (father and daughter); *McDonald's Ready-Mix Concrete*, 246 NLRB 152, 154 (1979) (father and son).

Furthermore, Victor, Josephine and Daniella Laracca used their personal and business assets to secure the financing for the Whippany store. The evidence discloses that absent the family financial backing and assistance in obtaining loans, Roberto Laracca would not have opened the Farmtastic store in Whippany. *E.L. Electric Co.*, supra, 359 NLRB No. 20 slip op. at 9 (Establishment and survival of alter ego company dependent on other company, although ownership was not the same); *Goldin Feldman*, supra, at 295 NLRB 41 at fn. 3 (alter ego status found where new company would have had severe difficulties in continuing in business had it not been for the assistance of father in obtaining loans for new company, and willingness to accept late payments on outstanding loans to father's company; Board concluded that father continued to exercise financial control over new company and, in fact the business' very livelihood was dependent on father's ability and willingness to negotiate with the bank and provide financial guarantees that allowed the bank to extend company's line of credit).

The facts in *Goldin Feldman*, supra, are nearly identical to the instant case. But for the loans to RL Market, which were negotiated by Victor and secured by the personal and business assets of Victor, as well as his wife and daughter, RL Market would not have been able to survive and the store would never have been opened. Thus the RL Market, Whippany store is simply another Laracca family supermarket and is financially indistinguishable from Victor's other supermarket operations, even though Roberto's name appears on the corporate and financial documents as the sole owner of RL Markets.

The business purpose and operations of the Cedar Knolls and Whippany stores are substantially the same. They were both supermarkets, selling Foodtown products (although not under the Foodtown banner), with delicatessen, produce, seafood and meat departments, as well as frozen foods and other products.

Both stores were members of the Allegiance Corporation, which dictates that the stores use the same purveyors, merchandising, and marketing mechanisms, including circulars and sales items, and technical support. The product line at the Whippany store is substantially the same as that maintained at Cedar Knolls. To its customers, employees, union agents, and owners of other supermarkets, the Whippany store appears nearly identical to the Cedar Knolls store.

The Farmtastic store in Whippany is only three miles away from the Cedar Knolls store and in the same township. Consequently, it serves the same customers. Indeed, some employees hired by Farmtastic for work at the Whippany store had worked that location when the store was operated as a Pathmark Supermarket. Thus RL Markets and Oliva conduct the same business in the same market and have common customers. *Industrial TurnAround Corp.*, supra, 321 NLRB at 187; *Sobeck Corp.*, 321 NLRB 259, 267 (1996); *Fugazy Continental Corp.*, 265 NLRB 1301, 1302–1303 (1982); *International Harvester*, 247 NLRB 791, 798 (1980).

Notably, in this regard, Victor testified that he used to live in Whippany, coached the soccer team there, and was well known in the community. Further, when the Cedar Knolls store went bankrupt, he was urged by residents of Whippany to take over the store, and open up the supermarket. This was part of his motivation for deciding to do so and to purchase the assets and open the store as an LLC under the name Oliva.

The testimony of Victor Laracca demonstrates his involvement in the management and decisionmaking of RL Markets, and that he considered himself to be an integral part of its operations. He continually used the pronoun “we” to refer to actions taken regarding the store's renovations and its financing. Indeed, the record reflected that Victor was the primary representative of RL Markets in dealing with the architect, the landlord, the construction company and the banks. I note in this regard, the record discloses that emails between Victor and the contractor, sent by Hicks on Victor's behalf, discussed the plans for the construction and the revisions. I note that Sarkasian, on behalf of Coldstat, emailed Hicks on March 29, 2012, asking “could you get Victor to give you the name he wants to use on the new paperwork for the new store?” Hicks responded that RL Markets is the company name and Roberto, the responsible party and Farmtastic the store name. Further, Victor used the first person “I” when stating he was considering

selling V & V in order to satisfy RL Markets debts which demonstrated that he was and is the ultimate decision maker for all three entities. See *Johnstown Corp.*, 313 NLRB 170, 171 (1993), enf'd. in relevant part, 41 F.3d 141 (3d Cir. 1994). (finding that a witness's use of pronoun “we” demonstrates that he was an important hand in decisionmaking in new company, despite his testimony that he had no involvement in operating it).

Similarly, the record establishes that Sharon Shepherd, the deli manager at V & V's Lake Hiawatha store, had heard about three years before the Whippany store opened, that the Laraccas were opening a store in Whippany, New Jersey. Shepherd told Roberto, who at the time was the store manager at V & V that she had heard that they were opening a new store in Whippany. Roberto answered “yes, we are.” A year later, Shepherd asked Roberto if the new store in Whippany is going to be Foodtown and is it going to be nonunion? Roberto replied that the store is not going to be a Foodtown and it will not be a union store. Over the next year, Shepherd had several conversations with Roberto about the Whippany store and also how things were going and when it would be opened. Roberto answered “we ran into problems and it's going to be open soon.” The record evidence of Hick's intermingling of funds amongst the accounts of the three Laracca business entities demonstrate that the financial management of the RL Market Whippany store is identical to the financial management of Oliva and V & V. Further, the lack of arms-length negotiation that attended the extensive comingling of funds, the lack of interest charged on monies provided by one company to the other is also significant. Patti Hicks has never been paid by RL Markets, but only by V & V and Oliva during her employment with the Laracca family enterprises. Yet she performed bookkeeping services along with Daniella Laracca for RL Markets during the entire time of RL Markets, from its formation in 2011, and continuing after the store opened in May of 2014. Financial management for the Farmtastic Whippany store was through long time bookkeeper Patti Hicks, assisted by Daniella Laracca, who performed bookkeeping for all three Laracca supermarkets, using the same financial programs, on the same computer, and in the same physical location.² The above is further demonstrative of the interrelation of operations between the entities, and support for any conclusion as detailed above, that the Whippany Farmtastic store was part of the Laracca family business.

The record reflects that the financial management of both stores is substantially identical. Victor controls the financing; the lack of any documentation showing the loans and their details from one company to the other, along with payments made directly by Oliva and V & V on behalf of RL Markets show that the Whippany store was simply substituted for Cedar Knolls as one place of a large family business operation run by Victor Varacca. *Crossroads Electric Inc.*, 341 NLRB 1502, 1506 (2004) (alter ego found where bookkeeper was performing bookkeeping functions for both companies); *A & P Brush*, supra, 323 NLRB at 208 (extensive involvement of family the

² The physical location changed when Cedar Knolls changed, and Hicks moved to the Whippany store where the bookkeeping for all stores was conducted.

establishment of new business indicates alter ego status, since mother retained financial interest in success or failure of new company although she was not an owner or manager of business); *Id.* *Midwest Precision Heating & Cooling*, 341 NLRB at 437 (lack of arms-length transaction between companies; sons paid some money on note for purchase of assets from father's companies, but rest was forgiven, making transfer of assets essentially an inheritance); *Carr Finishing Specialties*, supra, 358 NLRB 1766, 1776 (alter ego status found where lines of responsibility crossed with comingling of funds, where one person handled financial obligations for both companies, and paid obligations of one company from the account of the other company); *E. L. C. Electric*, supra, 359 NLRB at No. 20, slip op. at 9 (finding lack of arms-length business relationship where agreements to use materials were merely verbal, never reduced to writing, no interest was paid on loans and unpaid rent was never collected); *A.C. Electric*, supra, 333 NLRB at 1001 (less than arm's-length transaction regarding transfer of rights to equipment; some vans sold well below market value, and failure to pay anything for start-up tools and equipment); *Sobeck Corp.*, 321 NLRB 259, 267 (lack of arm's-length dealings coupled with accommodations to family interests; transactions among two companies and family members were for all practical purposes a matter of Frank Sobeck dealing with himself). Both firms used the same accounting and law firms. *SRC Painting*, supra, 346 NLRB at 721 (significant lack of arm's-length relationship; no lease documents or rent paid for space; no documentation of loans between companies, and no interest paid on loans); *El Vocero De Puerto Rico, Inc.*, 357 NLRB 1585, 1586, fn. 3.³

Operational management of the Whippany store rested primarily with the same individuals who ran the Cedar Knolls store. Construction and renovations were handled by Victor, who also handled lease negotiations and a subsequent rent settlement judgment with the landlord, which Victor signed on behalf of RL Markets. Daily retail operations at Whippany were controlled primarily by Adam Shapiro who ran Victor's Cedar Knolls store for 10 years until it closed in February of 2014. When Shapiro was given control, he set wage rates and benefits for the RL Markets employees, except for health benefits, which were decided by Roberto, who concluded that he would furnish health benefits only to full-time employees.

The majority of the department heads for all departments retained their positions at Whippany. A number of former Cedar Knolls employees were hired at the Whippany store, and most significantly a majority of Farmtastic's Whippany employees in the Local 464 bargaining unit were former employees of the Cedar Knolls store of Oliva, who were directly contacted by Adam Shapiro and interviewed by Shapiro, as soon as the Whippany store was ready to open.

As I have noted above, the Board does consider whether one entity was created by the owners of the first for purposes of evading labor responsibilities, in its alter ego analysis. However,

the Board has consistently held, supported by a majority of circuit court of appeals, that such a motive is not a requirement for finding alter ego status. *Newark Electric*, 362 NLRB No. 44, slip op. at 10; *Fallon-Williams*, 336 NLRB 602, fn. 7 (2001); *Johnstown Corp.*, supra, 313 NLRB 170. Here Respondents contend that RL Markets was not created in order to avoid obligations to the Union, inasmuch as RL Markets was formed in 2011, and they intended to operate both stores at the same time. It further argues that it did not intend to close the Cedar Knolls store, and was fighting with the landlord to renew its lease, until it was forced to close in February of 2014, when the landlord refused to renew the lease.

In view of the above, I cannot find that the creation of RL Markets was motivated by an intent to avoid union obligations. However, as noted, it is not essential for such a finding to establish alter ego status, and I conclude that the facts here are sufficient to prove that RL Markets and Oliva are alter egos.

The facts are as follows: (1) the RL Markets, Whippany store was secured by the Laracca family assets; (2) Victor Laracca oversees the ongoing financial operations of all three Laracca stores; (3) the Whippany store hired most of the Cedar Knolls managers and supervisors, a substantial portion of the Cedar Knolls employees, including a majority of the Cedar Knolls 464 unit employees; (4) the Whippany store is managed on a day to day basis by Adam Shapiro, the store manager at Oliva, who hired all the RL Markets employees and determined their salaries and benefits; (5) the employees perform substantially the same tasks they performed in Cedar Knolls at the Whippany store, operated in the same township, not 3 miles from the former Cedar Knolls location of Oliva, using similar equipment. Thus RL Markets is engaged in the same business with the same business purpose, and to a significant extent, the same customers. *Sobeck Corp.*, 321 NLRB at 267; *SRC Painting*, supra, 346 NLRB at 721; *Fugazy Continental Corp.*, 265 NLRB 1301 (1982); (6) the lack of arm's-length transactions between the entities, particularly the comingling of assets, payment of bills by one entity for the other's obligations, the lack of documentation for loans and for no interest on loans, free rent for use of office, and common use of bookkeepers. *El Vocero De Puerto Rico*, supra, 357 NLRB at 1606. (New company undercapitalized, also dependent on continuous transfer of funds and contributions from other company, transfers without documentation, and free office space supplied); *Carr Finishing Specialties, Inc.*, 358 NLRB 1766, 1776 (comingling of books); *Crossroads Electric, Inc.*, 343 NLRB 1502, 1506 (2004). (Bookkeeping operations performed for both companies, being paid only by one company); *E. L. C. Electric, Inc.*, 359 NLRB No. 20 slip op. at 9 (Financial assistance to new company no interest on loans, tenant without collecting rent. Thus, assistance received from company, without which new company would have never been established or able to survive as a viable business). Similarly, RL Markets, without the financial and other assistance from Victor and his family and other businesses, would never have been established or been able to survive as a viable business.

In these circumstances, I conclude that the evidence is sufficient to establish that RL Markets was and is an alter ego to Oliva, and the change involved "a mere technical change in the

³ Alter ego status found where, during the first year, the new company, similar to RL Markets here, was "almost entirely dependent on the continuous transfer of funds and in kind contributions" from the original company.

structure or identity of the employing entity . . . without, any substantial change in its ownership or management.” *Howard Johnson Co. v. Detroit Joint Executive Board Hotel & Restaurant Employees*, 417 U.S. 249, 259 fn. 5 (1974). *AD Conner*, 357 NLRB 1770, 1797 (2011).

General Counsel argues that although the creation of RL Markets may not have been motivated by an intention to avoid Oliva’s obligations to the Union, inasmuch as Oliva initially intended to remain open, even when RL Markets would be in full operation, that by the time Oliva closed and RL Markets opened, the facts were different. Thus, by October of 2013, Oliva was notified by the landlord that its lease was not going to be renewed, and it needed to vacate the premises. Thereafter, Oliva was negotiating with the landlord only on the terms of a month-to-month extension. Thus, the opportunity was created to move the entire operation to Whippany. Victor testified, “we closed the store down and now the Whippany store is not ready yet . . .,” because “we had this problem with the sewage.” Thus, General Counsel argues, and I agree, that but for the unforeseen delays in getting approvals from the Hanover Sewage Authority, the transition from Cedar Knolls to Whippany would have been seamless. Further, Victor knew that the imminent opening of the Wal-Mart near the Cedar Knolls would preclude the landlord from offering a new long term lease, and Respondents’ failure to perform any hiring for Farmtastic in December of 2013 or January of 2014, even though they expected that the store would open late January, demonstrates that Respondents expected the Cedar Knolls employees to simply move to the Farmtastic, Whippany store as soon as the Cedar Knolls lease expired.

The evidence overwhelmingly points to Respondents’ disdain for the Union contract. Both Roberto and Victor testified that they did not like the financial terms of the new contract; they thought it was too much, and they could not afford it. Victor admitted that he did not want to sign the union contract that had been agreed to in 2012, on behalf of Oliva, although he did eventually agree to sign it and be bound by it for his supervisors. Victor told Piscatelli during negotiations that he should not be required to pay the wages and benefits on the new contract, and Maniaci was told by Victor that he didn’t want to go ahead with the contract for his companies, because he wanted a better deal than the contract provided.

Moreover, Victor informed Hanley of Local 464 that the Whippany store would be nonunion; Roberto also informed Adam Shapiro when he hired him to be the store manager, and also, informed employee Sharon Sheppard, an employee, of another part of the Laracca family business. Further, Shapiro informed all of the employees whom he hired to work at the Whippany RL Markets, Whippany store, that the store would be nonunion when he interviewed them.

It is also notable that the decision to open the store as a Farmtastic, and not as a Foodtown, was made in 2012, at around the time of the negotiations for the new contract that V & V and Oliva were not happy about signing. Victor and Roberto were both aware that if they opened the store as a Foodtown, the store would have been obligated to recognize the union and apply the terms of the contract with Oliva to the bargaining unit employees.

I therefore conclude that although the purpose and the creation of RL Markets may not have been to evade its responsibilities under the Act, it is clear that the Laraccas (both Victor and Roberto) did not desire union representation for the employees of RL Markets, and told its employees and the union that fact. *A & P Brush Mfg. Corp.*, 323 NLRB 303, 304 (1997); *Mining Specialists, Inc.*, 314 NLRB 268, 272 (1994). I find that the establishment and opening of RL Markets was consistent with a desire to maintain a nonunion operation. *A & P Brush*, supra at 307 (finding that although the purpose of the creation of sales company was because son wanted to be his own boss and start his own business, mother owned old company, retained financial control over success or failure of new company, provided financing for business, and new company was intended to and was operated as a nonunion shop).

Accordingly, based upon the above analysis and precedent, I conclude that Oliva and RL Markets were and are alter egos of each other.

As I have also noted above, I also conclude that Oliva and RL Markets are a single employer. Such a finding is warranted, and viable, even absent a finding of alter ego status between the companies. *Rogan Brothers Sanitation*, supra, 362 NLRB No. 61. *Emcor Group, Inc.*, 330 NLRB 849 (2000).

As related above, the factors examined in assessing alter ego and single-employer status are similar, except for the issue of motive.

Further, the lack of arm’s-length relationship between the entities is significant in the analysis of both issues and is particularly significant in determining single employer status. Indeed, the Board has repeatedly held that “the hallmark of a single employer is the absence of an arm’s length relationship among seemingly independent companies.” *Bolivar-Tees, Inc.*, 349 NLRB 720 (2007) (single-employer relationship found where one company was located in Mexico and the other in America, where financial exigencies of one entity were met by the other); *RBE Electronics of S.D.*, 320 NLRB 80 (1995); *Hydrolines, Inc.*, 305 NLRB 416, 419 (1991); *Rogan Brothers*, supra slip op. at 3. Such lack of an arm’s-length relationship is demonstrated by bookkeeper’s performance of payroll functions for both companies and by comingling of funds of the two entities by one entity paying bills of the other, and by no interest loans and free rent, and nondocumented transactions. *Rogan Brothers* supra at 4–5 (controller same for both entities, checks issued to repay loans from payroll of one company for debts owed by other); *Spurlino Materials, Inc.*, 357 NLRB 1510, 1516 (2011) (controller runs accounting department for both companies); *Carr Finishing*, supra, 358 NLRB at 1766 (Funds deposited from one company into account of another, and one company paid obligations of another). *Grane Healthcare Co.*, 357 NLRB 1412, 1441 (2011) (Funds for purchase of a new facility jointly borrowed and guaranteed by number of entities by owners of entities.). *Emcor Corp.*, 330 NLRB 849 fn. 1 (2000) (performed payroll functions for both companies, and president of old company was involved in construction of new facility); *Naperville Jeep/Dodge*, 357 NLRB 2252, 2269 (2012) (sales vehicles of balance between the two entities.); *Emsing’s Supermarket, Inc.* 284 NLRB 302, 304 (1987); enfd. 872 F.2d 1279 (7th Cir. 1989) (1984) (Finding of single employer status

is supported by propensity to operate both companies “in such a manner that the exigencies of one would be met by the other,” showing the relationship was not at arm’s length).

The facts here are quite similar in these respects to the facts in the above cited precedent, and strongly support single employer status between Oliva and RL Markets. Indeed, the evidence of record supports the conclusion that I have made above, so correctly characterized in the Food News article, that RL Markets was another new store in the Laracca family business. As I have detailed above, Victor and the Laracca family guaranteed RL Markets’ loans with personal guarantees as well as with guarantees from Victor’s other business, V & V and Oliva. The loans between the entities were not documented, and no interest was paid or offered for on the loans, and no rent was paid.

V & V, Oliva, or Victor used RL Markets property to conduct business for Oliva and V & V.

Patti Hicks was the bookkeeper for V & V, Oliva and RL Markets, alter egos; she was never paid by RL Markets. Funds were comingled among the entities, and RL Markets’ bills were paid directly by V & V and or Oliva. Victor, although not an officer or director of RL Markets, negotiated the lease for RL Markets, handled and negotiated the construction for the new supermarket and was involved in the architect plans for the configuration of the Whippany store. Thus, the facts establish that the relationship between RL Markets and Oliva appears to be one of a close family rather than one between independent companies. *Blumenfeld Theatres Circuit*, 240 NLRB 206, 216 (1979) (Office furnished for official use of company without compensation, even though official performed duties for other company from that office).

Finally, I noted that Adam Shapiro, the manager for both RL Markets and Oliva, performed the same day-to-day management responsibilities that he had performed at Oliva while working at RL Markets. Shapiro was given the responsibility to determine the wage rates and benefits for the RL Markets employees, (except for Health Benefits, which were decided by Roberto). Shapiro interviewed and hired all the RL Markets employees, and is in charge of the day to day disciplinary matters and issues. Accordingly, the common labor relations aspect of simple employee status is satisfied.

Accordingly, based upon the foregoing analysis and precedent, I conclude that Oliva and RL Markets are single employers.

Having concluded, as I have, that Oliva and RL Markets are alter egos and single employers, it follows that the Respondents have violated Section 8(a)(5) and (1) of the Act, by refusing to recognize and bargain with Local 464 as the collective-bargaining representative for its unit employees at its Whippany facility, and by refusing to apply the terms of the collective-bargaining agreement in effect between Respondents and this union to its Whippany unit employees. *Newark Electric*, supra, 362 NLRB 44 at 12; *Carr Finishing Specialties*, supra, 358 NLRB 1766, 1777; *SRC Painting*, supra, 346 NLRB at 724; *Concourse Nursing Home*, 328 NLRB 692, 702–703 (1999).

Here the Respondents admit that Oliva was bound by the terms of the existing contract with the Union. Respondents further admit that they have neither recognized the Union as the

collective-bargaining representative for its employees employed at Whippany, nor applied the terms of this contract to the bargaining unit employees, including wage rates and benefit contributions.

Respondents argue that the union never organized the workers at the Whippany store and did not request recognition. However, in an alter ego single-employer situation, as here, the Union already represents the workers of the alter ego, single-employer company, and the existing contract applies. Accordingly, the Union is not required to request recognition.

Nonetheless, the record establishes that the Union did make requests for recognition and application of the contract to the Whippany employees, in Hanley’s conversation with Victor Laracca in February of 2014. Victor’s response was that the store was going to be nonunion. Further, the refusal to bargain charge filed by the Union is itself tantamount to a valid request for recognition. *Sterling Processing Corp.*, 291 NLRB 208, 212 (1988); *Roberts Electric Co.*, 227 NLRB 1312, 1319 (1977).

Accordingly, based upon the foregoing analysis and precedent I conclude that Respondents Oliva and RL Markets are alter egos, and or a single employer, and that it violated Section 8(a)(5) and (1) of the Act by failing to recognize the Union as the representative of its Whippany bargaining unit employees, and failed to apply the terms of its collective-bargaining agreement to those employees, when it opened its Whippany store.

CONCLUSIONS OF LAW

1. The Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent RL Markets is the alter ego of Respondent Oliva, and RL Markets and Oliva are single employers, within the meaning of the Act.

4. By failing and refusing to recognize the Union as the collective-bargaining representative of its employees at its Whippany, New Jersey location, employed in the bargaining unit represented by the Union, and by failing to apply to the unit employees the collective-bargaining agreement between Respondent Oliva and the Union, Respondents have violated Section 8(a)(5) and (1) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents are alter egos and/or a single employer which engaged in certain unfair labor practices, I shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondents shall be required to recognize and, on request, bargain with the Union as the collective-bargaining representative of all employees in the unit. Respondents shall also be required to make whole the unit employees for any loss of earnings and other benefits suffered as a result of the Respondents’ failure to apply the collective-bargaining agreement in effect from March 18, 2012, to June 18 2016, as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d

502 (6th Cir. 1971), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), and *Kentucky River Medical Center*, 356 NLRB 6 (2010).

Finally, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to continue in effect all the terms and conditions of their existing collective-bargaining agreement by failing, since May 7, 2014, to make the contractually required contributions to the Union's fringe benefits funds set forth in the collective-bargaining agreement, I shall order the Respondents to make all required benefit fund contributions since May 7, 2014, including any additional amounts applicable to such funds as set forth in *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondents shall reimburse unit employees for any expenses resulting from the Respondent's failure to make the required contributions to the funds, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), such amounts are to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons*, supra.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴

ORDER

The Respondents, Oliva Supermarkets, LLC and RL Markets 1, LLC, Cedar Knolls and Whippany, New Jersey, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Failing and refusing to recognize the Union as the collective-bargaining representative of all employees employed at its Whippany, New Jersey store, employed in the meat, poultry, fish, appetizer and delicatessen departments, both full and part time.

(b) Failing and refusing to apply to unit employees the collective-bargaining agreement covering the employees in the above unit, in effect from March 18, 2012, to June 18 2016.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees.

(b) Make whole all bargaining unit employees and all benefit funds for any loss of income contributions, or benefits, and for any expenses incurred in connection with those benefit fund losses by those employees, in the manner set forth in the remedy section of this decision.

(c) Preserve and within 14 days of a request or such additional time as the Regional Director may allow for good cause shown provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records

⁴ If no exceptions are filed as provided by Sec 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this decision.

(d) Within 14 days after service by the Region, post at its facility in Whippany, New Jersey, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since May 4, 2014.

(e) Within 21 days after service by the Region, file with the Regional Director for Region 22 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

Dated, Washington, D.C. December 18, 2015

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail to refuse to bargain in good faith with the collective-bargaining representative of our employees in the appropriate bargaining unit described below:

All employees employed at our Whippany, New Jersey facility, in the meat, poultry, fish, appetizer and delicatessen departments, both full and part time.

WE WILL NOT fail and refuse to recognize and adhere to the collective-bargaining agreement dated March 18, 2012, through June 18, 2016, by failing to pay contractually established wage

⁵ If this Order is enforced by the judgment of the United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an order of the National Labor Relations Board."

rates and failing to make contractually-required fund contributions to the unit described above.

WE WILL NOT in any similar manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make whole our employees for any losses they may have suffered as a result of our refusal to honor the applicable collective-bargaining agreement by transmitting, with interest, the contributions owed on their behalf to the Union's funds.

WE WILL continue in force and effect the collective-bargaining agreement effective from March 18, 2012, through

June 18, 2016.

WE WILL make whole all bargaining unit employees and all benefit funds for any loss of income, contributions and for any expenses incurred in connection with these benefit fund losses by those employees.

OLIVA SUPERMARKETS, LLC AND RL MARKETS I,
LLC